

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

DANNY RAY McLAIN,

Applicant,

VS.

NO. 4:08-CV-648-A

NATHANIEL QUARTERMAN,  
DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS  
DIVISION,

Respondent.

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**CLERK, U.S. DISTRICT COURT**  
By \_\_\_\_\_  
Deputy

FEB - 6 2009

O R D E R

Came on for consideration the above-captioned action wherein Danny Ray McLain ("McLain") is applicant and Nathaniel Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division, is respondent.<sup>1</sup> This is an application for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On January 7, 2009, United States Magistrate Judge Charles Bleil issued his proposed findings, conclusions, and recommendation ("FC&R"), and ordered that McLain file objections, if any thereto, by January 28, 2009. McLain timely filed his objections.

In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the court makes a de novo determination of those portions of the proposed findings,

<sup>1</sup> Applicant refers to his application as "petition" and to himself as "petitioner." Consistent with the language of 28 U.S.C. § 2254, the court uses the terms "applicant" and "application" instead of "petitioner" and "petition."

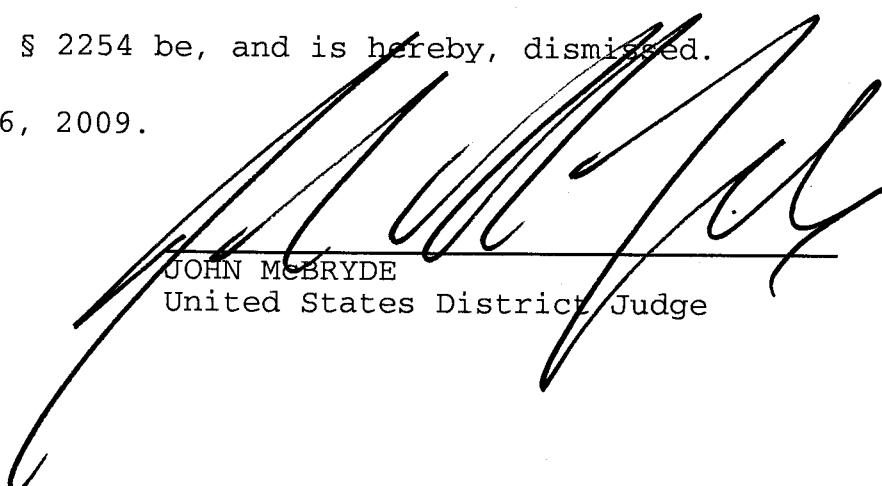
conclusions, and recommendation to which specific objection is made. United States v. Raddatz, 447 U.S. 667, 673-75 (1980). The court need not address any nonspecific, frivolous, or conclusory objections. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

In his application, McClain challenges his parole revocation proceeding in 1997 and the calculation of his sentence following this proceeding. The magistrate judge recommended that McLain's application be dismissed as untimely. Having reviewed McClain's objections, the court is satisfied that they are without merit. The magistrate judge correctly concluded that McLain's claims are barred by 28 U.S.C. § 2244(d) and he is not entitled to equitable tolling.

Therefore,

The court accepts the findings, conclusions, and recommendation of the magistrate judge and ORDERS that the application of Danny Ray McLain for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be, and is hereby, dismissed.

SIGNED February 6, 2009.



JOHN MCBRYDE  
United States District Judge